

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8331 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

KALUANJIBHAI G PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR LR POOJARI, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1
MR BHARAT T RAO for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/03/99

ORAL JUDGEMENT

The petitioner through this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 9.9.1998 passed by the District Magistrate, Rajkot under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,1980 and has prayed that the said order be quashed and he be released immediately from illegal detention.

The grounds of detention clearly show that the petitioner was engaged in adulterating groundnut oil with cheaper quality of mustard oil and was selling in the name and brand of pure groundnut oil and was thus earning huge profit for personal gain by indulging in such blackmarketing activity. In order to prevent commission of such blackmarketing activity, which was an obstacle in the supply of essential commodity viz. pure groundnut oil, the impugned detention order was passed.

The impugned order of detention has been challenged on three grounds in the course of arguments.

The first ground has been that the representation sent by the brother of the detenu on 17.9.1998 was rejected by the Detaining Authority on 24.9.1998, a date when he had no jurisdiction to take decision on such representation. It may be mentioned that first representation from the detenu was made to the Detaining Authority on 15.9.1998 which was received by the Detaining Authority on 16.9.1998 at 1.40 p.m. as is disclosed in the additional counter affidavit of the Detaining Authority. It was considered and rejected on the same date and rejection order was communicated by post to the detenu through Jail Superintendent. Thus, representation of the detenu was expeditiously considered and rejected by the Detaining Authority. The detention order was passed on 9.9.1998. This order was approved by the State Government on 19.9.1998. On factual side it has not been in dispute that the representations sent by the detenu and his brother were not identical, rather, different grounds were taken in the two representations. The learned Assistant Government Pleader could not support his contention from any authority of this Court or of the Apex Court that successive representation is not to be decided by the authority concerned. The successive representation has also to be decided by the concerned authority, the only exception is that successive representation need not be disposed of so expeditiously as the first representation. If additional grounds were there in the second representation it was meant for consideration by the concerned authority. On the facts and circumstances of the case, if the detention order dated 9.9.1998 was confirmed by the State Government on 19.9.1998 the Competent Authority to deal with the representation sent by the brother of the detenu was the State Government and not the Detaining Authority. Since this representation was received by the Detaining Authority on 21.9.1998, as disclosed in the additional counter affidavit of the Detaining Authority, it should

have been forwarded to the State Government for consideration. The Detaining Authority, on the other hand, considered this representation and rejected the same on 24.9.1998. This order was patently without jurisdiction. The effect of this action of the Detaining Authority is two fold. The first that the order of rejection dated 24.9.1998 becomes an order without jurisdiction and authority. In the second place the representation of the brother of the detenu which should have been considered by the State Government was not at all considered. Consequently, it can be said that the representation sent by the brother of the detenu was not at all considered by the competent authority viz. the State Government in as much as it was never laid before the State Government. This has certainly rendered the detention order and continued detention of the petitioner illegal.

The second contention has been that the representation sent to the Central Government was also not expeditiously disposed of. On the basis of the second counter affidavit dated 5.3.1999 of Shri A.L.Makhijani, Shri B.T.Rao rightly contended that there was no delay on the part of the Central Government in dealing with the representation and if there was any delay it was on account of lethargy of the State Government in not sending parawise comments expeditiously. He has referred to para 2 of the counter affidavit of Shri A.L.Makhijani in which it is deposed that the representation dated 15.9.1998 made by the Advocate of the detenu was received in the concerned section on 21.9.1998 and the representation dated 17.9.1998 made by the brother of the detenu was also received on the same date. After receiving these representations parawise comments from the State Government was thought necessary. Since 19.9.1998 and 20.9.1998 were holidays being Saturday and Sunday, it was telegraphically called for vide telegram dated 21.9.1998. There is also explanation that the representations were received in the Receipt and Issue section of the department on 16.9.1998 and 19.9.1998 and thereafter these were sent to the concerned section. Parawise comments were received on these representations from the State Government on 20.10.1998 and thereafter these were sent to the concerned section. These representations were rejected on 23.10.1998. The Central Government could not have decided the two representations effectively without looking to the parawise comments from the State Government. Since parawise comments were received only on 20.10.1998. It required sometime for consideration. If the representations, in these

circumstances, were rejected on 23.10.1998 certainly it can be said that there was no delay on the part of the Central Government, rather the Central Government expeditiously disposed of the representations.

Apparently there seems to be delay in disposal of the two representations by the Central Government, but for this so called apparent delay the State Government is squarely responsible so also the Detaining Authority who was sitting tight over the matter of preparing and forwarding parawise comments on the representations. From para 4 of the affidavit of Shri P.R.Shukla, Deputy Secretary, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, it is clear that the State Government took decision on the representation of the detenu on 6.10.1998. The delay in dealing with representation by the State Government is sufficiently explained in this para. In this para delay in preparing and forwarding parawise comments to the Central Government is not satisfactory explained. What is further deposed in this para is that the copy of representation sent by the Central Government along with post copy of telegram dated 21.9.98 was received by the State Government on 25.9.1998. The delay between 21.9.98 and 25.9.98 was on account of postal communication which has to be ignored. The State Government called for parawise comments from the District Magistrate by fax message dated 28.9.98. The delay between 25.9.98 to 28.9.98 is also explained in as much as 26th & 27th September, 1998 were Government holidays. As such on the reopening day the fax message was sent to the District Magistrate. The District Magistrate returned parawise comments under his letter dated 12.10.1998. Thus, the delay between 28.9.1998 to 11.10.1998 is not at all explained. It can be presumed that the fax message was delivered to the District Magistrate on 28.9.98. It can also be presumed that the parawise comments were ready on 11.10.98 but why so much time was taken by the District Magistrate between 28.9.98 to 11.10.98 is not at all explained. This, therefore, indicates that lethargy of the Detaining Authority was also responsible for late disposal of the representations by the Central Government. The Detaining Authority as well as the State Government were expected to deal with the request of the Central Government for sending parawise comments expeditiously. Since this was not done the detention order as well as continued detention of the detenu is rendered illegal and invalid. As a consequence thereof the detention order cannot be sustained. It has therefore to be quashed.

The writ petition, therefore, succeeds and is hereby allowed. The impugned detention order dated 9.9.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt